

## REMARKS

The subject application has been reviewed in light of the non-final Office Action dated October 21, 2009. Claims 1-37, as originally filed, are pending in the subject application with claims 1, 13 and 25 being in independent form.

### Objection to Claims 8, 9, 20, 21, 32 and 33

In the Office Action Summary form (PTOL-326) attached to the October 21, 2009 Office Action, the Examiner indicated that claims 8, 9, 20, 21, 32 and 33 were objected to. However, the Examiner does not state in the October 21, 2009 Office Action any reason for objecting to claims 8, 9, 20, 21, 32 and 33.

Applicant respectfully points out that 37 C.F.R. §1.104(a)(2) requires that the reason for any objection be stated in the Office Action.

Based on the above, Applicant respectfully submits that the Examiner's objection to claims 8, 9, 20, 21, 32 and 33 is improper for failing to provide any reason for the objection.

Withdrawal of the Examiner's objection to claims 8, 9, 20, 21, 32 and 33 is respectfully requested.

### Rejection of Claims 1-7, 10-19, 22-31 and 34-37 Under 35 U.S.C. §103(a)

In the October 21, 2009 Office Action, the Examiner rejected claims 1-7, 10-19, 22-31 and 34-37 under 35 U.S.C. §103(a).

First, Applicant respectfully directs the Examiner's attention to the rejection of claims 1-3, 10-15, 22-27 and 34-37 as being allegedly unpatentable over JP 2003-32226 to Yoshii Isamu et al. (hereinafter "Yoshii") in view of Applicant's allegedly admitted prior art.

Applicant respectfully traverses the Examiner's rejection for at least the following reasons.

Regarding independent claim 1, the Examiner acknowledged that Yoshii fails to teach or suggest the recited feature "correspondence determining means for determining, upon producing first through M-th (M being an integer not smaller than 2) transmission signals, correspondence between first through K-th (K being an integer not smaller than 2) transmission sequences and frequency channels so that the correspondence is different for each transmission signal".

However, the Examiner alleged that Applicant's allegedly admitted prior art teaches the acknowledged deficiencies of Yoshii. Specifically, the Examiner stated on page 4 of the October 21, 2009 Office Action:

(See figs. 4-5: ¶s 15 & 18) Prior art discloses that the correspondence is different for each transmission signal. (¶ 15 "hopping pattern generator produces a hopping pattern  $S_{HP1}$  unique to the transmitter" & ¶ 18 "hopping pattern generator produces unique hopping patterns  $S_{HP1}$  to  $S_{HPK}$  corresponding to the transmitters in figure 4")

On page 5 of the October 21, 2009 Office Action, the Examiner reasoned that it would have been obvious to one of ordinary skill in the art to incorporate the features of Applicant's allegedly admitted prior art into the system of Yoshii to arrive at the claimed wireless communication system of independent claim 1.

Referring to Figure 4 of the subject application, the Background Art section of the subject application describes generation of a unique hopping pattern for each transmitter, wherein **each transmitter generates and transmits a plurality of transmission signals**. Specifically, a hopping pattern generating portion (reference numeral 86 in Figure 4) produces a

hopping pattern  $S_{HP1}$  unique to the transmitter 8-1 to thereby make the transmitter 8-1 produce a plurality of transmission signals  $S_{TSX11}$  and  $S_{TSX12}$  by using the hopping pattern  $S_{HP1}$ .

In contrast, according to the invention of described in the subject application, **a plurality of** unique hopping patterns are generated for each transmitter, wherein **each transmitter generates and transmits a plurality of transmission signals** by using the **plurality** of hopping patterns.

Based on the above, Applicant respectfully submits that the Background Art section of the subject application does not teach a plurality of unique hopping patterns are generated for each transmitter, wherein each transmitter generates and transmits a plurality of transmission signals by using the plurality of hopping patterns. Therefore, Yoshii even when considered in view of the disclosures of the Background Art section of the subject application fails to teach or suggest the feature “correspondence determining means for determining, upon producing first through M-th (M being an integer not smaller than 2) transmission signals, correspondence between first through K-th (K being an integer not smaller than 2) transmission sequences and frequency channels so that the correspondence is different for each transmission signal” set forth in independent claim 1.

Applicant respectfully submits that independent claim 1 is patentable over the combined teachings of the cited art for at least the reasons set forth above. Applicants respectfully submit that independent claims 13 and 25 are patentable over the cited art for at least similar reasons.

Claims 2, 3, 10-12, 14, 15, 22-24, 26, 27 and 34-37 depend from and include all of the limitations of independent claims 1, 13 and 25, respectively. Accordingly, claims 2, 3, 10-

12, 14, 15, 22-24, 26, 27 and 34-37 are patentable over the cited art for at least the reasons set forth above with respect to independent claims 1, 13 and 25.

Withdrawal of the Examiner's rejection of claims 1-3, 10-15, 22-27 and 34-37 as being allegedly unpatentable over JP 2003-32226 to Yoshii in view of Applicant's allegedly admitted prior art, is respectfully requested.

Second, Applicant respectfully directs the Examiner's attention to the rejection of claims 4-7, 16-19 and 28-31 as being allegedly unpatentable over Isamu in view of Applicant's allegedly admitted prior art and U.S. Patent Application Publication No. 2006/0215603 A1 to Nishio et al. (hereinafter "Nishio") and the rejection of claims 1-7, 10-19, 22-31 and 34-37 as being allegedly unpatentable over Isamu in view of Nishio.

Applicant respectfully traverses the Examiner's rejection for at least the following reasons.

The subject application is a national stage application of International Application No. PCT/JP2004/19754 filed on December 24, 2004 designating the United States. Pursuant to 35 U.S.C. §363, the effective filing date of the subject application is the December 24, 2004 filing date of International Application No. PCT/JP2004/19754. The December 24, 2004 effective filing date of the subject application is also treated as the date of invention for initial examination purposes.

Nishio was published on September 28, 2006 from a national stage application (U.S. Application Serial No. 10/550,557) of International Application No. PCT/JP2004/04875 filed on April 2, 2004. Applicant notes that International Application No. PCT/JP2004/04875 designates the United States **but was not published in English under PCT Article 21(2).**

MPEP 2136.03 instructs that if a potential reference resulted from an international application, the international filing date is a U.S. filing date for prior art purposes under subsection (e) of 35 U.S.C. §102 only if the international application meets the following three conditions: (1) an international filing date on or after November 29, 2000; (2) designated the United States; and (3) published under PCT Article 21(2) in English.

Since International Application No. PCT/JP2004/04875 **was not published in English under PCT Article 21(2)**, the April 2, 2004 filing date of International Application No. PCT/JP2004/04875 is not treated as a U.S. filing date and Nishio cannot be applied as a prior art reference under subsection (e) of 35 U.S.C. §102 as of its April 2, 2004 international filing date.

Nishio also cannot be applied under subsections (a) or (b) of 35 U.S.C. §102 because it was published (i.e., September 28, 2006) after the December 24, 2004 effective filing date of the subject application. Nishio also cannot be applied under any other subsections (i.e., (c), (d), (f) or (g)) of 35 U.S.C. §102 for apparent reasons.

Based on the above, Applicant respectfully submit that Nishio does not qualify as prior art under any subsection of 35 U.S.C. §102. Accordingly, the Examiner's rejection of claims 4-7, 16-19 and 28-31 as being allegedly unpatentable over Yoshii in view of Applicant's allegedly admitted prior art and Nishio, and the Examiner's rejection of claims 1-7, 10-19, 22-31 and 34-37 as being allegedly unpatentable over Yoshii in view of Nishio, is improper and must be withdrawn.

### Conclusion

In view of the above, it is respectfully submitted that the subject application is in condition for allowance. Accordingly, it is respectfully requested that the subject application be allowed and a Notice of Allowance issued. If the Examiner believes that a telephone conference with Applicant's attorneys would be advantageous to the disposition of this case, the Examiner is requested to telephone the undersigned.

Respectfully submitted,

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